

CIVIL REVISION APPLICATION NO. 1221 OF 1996.

Date of decision: 24.1.1997.

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. A.B. Munshi, advocate for petitioner.

Respondents No.1 to 8 -served.

Mr. H.J. Nanavati- advocate for respondents No. 9 to 17.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: R.R.Jain,J.

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January 24, 1997.

Oral judgment:

Rule.

Heard the learned advocates.

It is true that Ex.5, application for interim relief, as well as Ex.34, application under Order 1 Rule 10 of the Civil Procedure Code, have been disposed of by common order dated 21.5.1996. On perusal, it appears that both the applications Ex.5 and Ex.34 were rejected. The impugned order so far as relates to application Ex.5 was challenged by the petitioner before the lower appellate court and has filed present Civil Revision Application so

far as relates to order passed below Ex.34.

The controversy raised in Ex.34 is very narrow. Vide this application, the petitioner/plaintiff moved the court for adding third parties as defendants as they have purchased the suit property during pendency of existing litigation.

It cannot be said that the suit is filed for specific performance of a registered agreement dated 12.10.1987. Before passing the decree interest of all the parties qua suit property will have to be ascertained by the court keeping in mind rival contentions as well as interest of parties. It is only thereafter that the court may pass decree for specific performance. In absence of resolution of interest of all persons claiming interested in the suit property it would be difficult for the petitioner to execute anticipatory decree of specific performance. In this case, the respondents have sold property to the proposed parties, therefore, before deciding the question of specific performance, interest of proposed parties, the purchasers, will have to be looked into consequently, the proposed parties are not only proper parties but necessary parties without whose presence no effective and complete adjudication of dispute could be made and no relief granted. Consequently, the petitioner's request made vide application Ex.34 deserves to be accepted.

In light of the aforesaid facts and circumstances, the impugned order of trial court rejecting application Ex.34 in Special Civil Suit No. 667 of 1995 is hereby set aside. Application Ex.34 preferred by the petitioner under Order 1 Rule 10 of the Code is hereby allowed. Proposed parties are ordered to be joined as defendants. Petitioner is directed to carry out amendment within two weeks from the date of receipt of writ by the trial court. Fresh summons to newly added parties. Rule is made absolute to the aforesaid extent with no order as to costs. It is made clear that the Court does not express any view regarding merits of the order passed below Ex.5 as was not the subject matter of this application.